

WATER/FLC/PTL/HJL:jlj

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION

Water Branch

RESOLUTION NO. W-4522

April 7, 2005

R E S O L U T I O N

**(RES. W-4522), POINT ARENA WATER WORKS (PAWW). ORDER
AUTHORIZING A SURCHARGE OF \$6.98 PER MONTH PER
CUSTOMER FOR SIX YEARS PRODUCING AN ANNUAL INCREASE
IN REVENUE OF \$15,485 OR 7.9% FOR A TOTAL OF \$92,911 TO
RECOVER PROFESSIONAL EXPENSES.**

SUMMARY

By Advice Letter No. 49, filed on October 28, 2004, PAWW requests a surcharge of \$6.98 per month per customer for six years producing an annual increase in revenue of \$15,485 for a total of \$92,911 to recover legal fees and other costs associated with a formal rate proceeding. In Res. W-4356, dated October 24, 2002, the Commission authorized PAWW to establish memorandum accounts to track the legal expenses associated with the formal rate proceeding. This resolution grants PAWW a surcharge of \$6.98 per month per customer for six years producing an annual increase in revenue of \$15,485 or 7.9% for a total of \$92,911 to recover legal expenses. The surcharge will not result in a rate of return greater than last authorized for PAWW.

BACKGROUND

PAWW is a Class D water utility that serves 185 connections in the City of Point Arena and vicinity and Whiskey Shoals Subdivisions 1, 2, and 3, in Mendocino County. PAWW's last general rate case was authorized by Res. W-4356, dated October 28, 2002, authorizing an interim increase of \$70,137 or 56.9% and a rate of return of 13.0%. Res. W-4356 ordered the following:

- 5) Point Arena Water Works is authorized to establish a memorandum account to track legal and other expenses associated with the formal proceeding to take place in this matter.
- 6) Point Arena Water Works is authorized to file an advice letter requesting recovery of costs recorded in the memorandum account subject to reasonableness review once the final rate proceeding is concluded.

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Decision (D.) 04-09-025 dated September 2, 2004, stipulates the following:

4) RE: Certain Costs Accumulated in a Memorandum Account.

The parties acknowledge that applicant has been authorized by the California Public Utilities Commission to track in a memorandum account, certain expenses incurred by Applicant in connection with its pending request for general rate relief and that Applicant will hereafter apply to the Commission by advice letter to recover such expenses through surcharges to be included in future customers' bills. The parties further acknowledge that at such time, the city may challenge the reasonableness of such expenses and the propriety of allowing said expenses to be recovered by Applicant through customer surcharges. Applicant agrees that such total expenses as may be approved by the Commission for recovery as surcharges (without provision for interest therein) shall be amortized by equal monthly surcharges over a period of six years. Applicant further agrees to include from the costs accumulated in said memorandum account the charges by Applicant's legal counsel for his service commencing January 7, 2004, in this proceeding.

NOTICE, PROTESTS, AND RESPONSE

A notice of the proposed surcharge was published in the October 29, 2004 edition of the Independent Coast Observer. The Division has received one written protest from the Mayor of the City of Point Arena. The city objected to the increase for the following reasons:

The City of Point Arena submitted a protest to the Division dated November 8, 2004, stating its objection to the surcharge. The City is a customer of Point Arena.

Specifically, the City states that:

- "1. The Notice printed in a local newspaper and mailed to every customer did not adequately inform ratepayers that they had a right to protest the surcharge because it was accompanied by a "press release" that falsely claimed that an ALJ of the CPUC had already approved the \$92,911 surcharge that would go into effect on January 1, 2004. Therefore, the surcharge should be renoticed.
2. PAWW has not met its burden of proof to adequately document its claim for the recovery of \$92,911. Since the hours claimed for the Hays, office staff, and truck are not presented with any description of the activity, these payments may be double booked or may not relate to this proceeding and should be deducted. There is no support for the hourly rates requested by the attorney or the

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accountant, who spent much of the billed time educating themselves on CPUC procedure. There is no documentation to show how the \$6.98 surcharge was calculated.

3. In awarding compensation, the Commission must make a finding that the funds expended were in the interest of the ratepayer or of benefit to the ratepayer. In this case that finding cannot be made as the company spent nearly \$40,000 in legal costs to defend its inflated ratebase and negligent bookkeeping and management. The City therefore challenges the propriety of allowing these expenses to be recovered by the Applicant through customer surcharges.
4. More than 95% of the attorney's fees should be reduced or removed as they pertain to data management and other administrative or clerical or paralegal tasks. Correcting the attorney's billing would reduce the cost of attorney expenses from \$80,600 to \$5,700 if the AT&T issue was excluded and non-legal tasks were charged at a reasonable rate. If the AT&T issue is not excluded, those hours charged need to likewise be attributed to tasks charged at a reasonable hourly rate. The AT&T expenditures would be reduced from \$39,850 to \$7,876.
5. Forty-seven hours of the attorney's billed time are claimed for uncalled-for tasks or tasks clearly beyond the scope of this formal proceeding should not have been included in the memorandum account. The CPUC has authorized PAWW nearly \$50,000 a year in the 2002 GRC for legal/management/regulatory expenses, which is more than adequate to cover these expenses.
6. At least 50% of the account fees should be removed or reduced as they are outside the scope of this proceeding or pertain to simple bookkeeping or clerical tasks.
7. Funds recorded in the memorandum account appear to be double-booked, they are either already being recovered from the ratepayers from expenses authorized in the last GRC and/or appear in the Annual Reports, perhaps to justify future General Rate Increases."

PAWW responded to the Mayor's protest by stating again that the AT&T refund issue was the worst time-consuming activity, which took 290 hours. This issue was resolved at the hearing and a \$34,405 adjustment to the Contributions was made reducing rate base by \$34,405. In addition, PAWW deferred its hours charged and emphasizes the fact that \$250 per hour for legal work is appropriate and that accounting, paralegal, and the clerical work were charged at a different rate.

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The City of Point Arena's specific statements have been addressed as follows:

- "1. The Notice to Customers published on October 29, 2004 in the Public Notice section of the local newspaper, Independent Coast Observer, and mailed to each customer clearly states the right to protest. An additional statement was published in the Independent Coast Observer on November 5, 2004 to clarify any confusion caused by the accompaniment of the "Press Release". Therefore, the "Notice to Customers" does not need to be renoticed. To-date, the only protest received has been from the City of Point Arena, i.e.; only one from 185 customers.
2. PAWW has met its burden of proof by submitting detailed descriptions of PAWW's staff time cards to Mr. Curry on November 30, 2004. Attorney and Accountant's rates were included in the original Advice Letter #49 packages sent to those listed on our Certificate of Service by mail with the exception of one page of the Accountant's time, which I provided to Mr. Curry, Josie Babaran, William Fleckles, and Mayor Leslie Dahlhoff on November 16, 2004.

PAWW acknowledges that the method of calculation of the \$6.98 surcharge was not included in submitted documentation. However, all of the parties involved knew the recovery period was to be six years, and PAWW's current customer base totals one hundred eighty-five (185). A simple math calculation verifies the \$6.98 figure. ($\$92,911 \div 185 \div 72 = \6.98)

3. If the City and the CPUC staff had not converted from an informal proceeding to a formal proceeding, PAWW would not have incurred legal fees and expenses in question and therefore, would not be requesting recovery of these expenses from the formal rate case. From the time the formal proceeding began, it was known that ratepayers' monthly bills would reflect a surcharge for recovery of expenses incurred by PAWW. As a matter of fact, Mayor Dahlhoff and City Attorney, Joe Brecher, agreed to the formal proceeding by saying the additional expense associated there with was a risk they were willing to take. This statement was made at the meeting in San Francisco witnessed by the Judge and all parties involved. All Commissioners signed the order that this become a memorandum account, which would be paid by the rate payers through a surcharge.
4. How could PAWW deal with a formal proceeding without the assistance of an attorney? The reasonableness of his fees is well documented by his submitted time cards. The Attorney fees, which include data management, clerical and paralegal tasks were performed in good faith and billed to PAWW. The fees incurred by the attorney on PAWW's behalf are at a reasonable rate and,

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therefore, should be included in whole in the memorandum account. The entire attorney's billed time in Advice Letter #49 dealt with the whole formal proceeding including the "AT&T issue". In fact, the "AT&T issue" was not a stand-alone matter as evidenced in Application 02-11-057. In an article published in the Independent Coast Observer on April 14, 2004 by Mayor Dahlhoff, she acknowledged this by saying in my underlining "There were numerous issues raised in protesting the large rate increase, including justification for the operational expenses." Although the AT&T issue has been resolved, it was included in the memorandum account and should not be excluded.

5. Specifically, which 47 hours are "uncalled for tasks or tasks clearly beyond the scope of this formal proceeding"? The CPUC has authorized PAWW monies for legal expenses. However, CPUC only allows \$7,450 for professional services incurred from normal operating expense. As stated previously, the formal proceeding is above and beyond normal operating expenses and, therefore, any fees and expenses incurred must be recovered by a surcharge.
6. The accountant's fees included in the memorandum account were for activities other than normal services provided to PAWW and rendered in 2003, therefore, should also be wholly included in the surcharge.
7. Expenses recorded in the memorandum account are specific to the formal proceeding and do not include any other activities. The memorandum account was established to track expenses related to the formal proceeding only. Funds recorded in that account are not being recovered from the ratepayers' present rates."

As previously mentioned, PAWW has incurred additional expenses of \$92,911.83 as a result of the requirement that the case be changed from an informal general rate case to a formal proceeding. In review of the Appendix A to Resolution W-4356, there is a schedule that shows PAWW estimated its present rates established by 2001 Resolution W-4308. The draft Resolution W-4522's seven specific estimated expense categories, totaling \$59,413.00, are IDENTICAL to the amount provided for in the same respective category in the 2001 Resolution, which was designed to only cover PAWW's "current" or 2001 operating expenses. The draft Resolution W-4522 clearly does not compensate for the additional costs related to the formal proceeding incurred between November 2002 and early January 2004.

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DISCUSSION

Res. W-4356, dated October 24, 2002, Ordering Paragraph 6, and Stipulation No. 4 of D.04-09-025, establish a memorandum account for litigation expenses to track legal and other expenses associated with the formal proceeding.

On October 8, 2004, PAWW filed Advice Letter No. 49 requesting recovery of \$92,911 in legal expenses associated with the formal proceeding. The advice letter requested that recovery be spread over a 72-month period with each service connection receiving a surcharge of \$6.98. The Water Division (Division) reviewed the invoices, time sheets, and the calculation of the reimbursement surcharge and concurred with the utility's request.

COMMENTS ON THE ALTERNATE DRAFT RESOLUTION

The alternate draft Resolution in this matter was mailed to the service list in accordance with Section 311(g)(1) and Rule 77.7. Comments were filed on _____, and reply comments were filed on _____.

COMPLIANCE

There are no outstanding Commission orders requiring system improvements. PAWW has filed annual reports as required.

FINDINGS AND CONCLUSIONS

1. The six-year monthly surcharge of \$6.98 requested by the PAWW is reasonable and should be authorized.
2. The surcharge should be \$6.98 per month for a six-year period for a total of \$92,911.
3. PAWW should collect the six-year surcharge beginning June 1, 2005.
4. The six-year surcharge should terminate once the amount of \$92,911 has been collected.

THEREFORE IT IS ORDERED THAT:

1. Point Arena Water Works is authorized to file a supplemental advice letter to adopt the rate schedule attached as Appendix A and concurrently to cancel its presently effective rate schedule. The effective date of the new schedule shall be June 1, 2005.

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2. The Point Arena Water Works shall collect the six-year surcharge beginning June 1, 2005.
3. The Point Arena Water Works' six-year surcharge will terminate once the amount of \$92,911 has been collected.

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4. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on April 7, 2005; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director

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APPENDIX A

Schedule No. 1

GENERAL METERED SERVICE
(continued)

SPECIAL CONDITIONS (continued)

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| 4. In addition to the above rates and charges rendered to all bills under this schedule, a surcharge in the amount of \$6.98 per month will be charged each customer for a period of 6 years from the effective date of Advice Letter No. 49-A. This surcharge is specifically for the recovery of expenses established by the memorandum account authorized by Res. W-4356, dated October 24, 2002, and the Joint Stipulation attached to D.04-09-025, dated September 2, 2004. | (N)

(N) |
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